



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-1009]

RIN 1625-AA11

Regulated Navigation Area; Recovery Operations, the Port of New York and New Jersey, NJ and NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a temporary Regulated Navigation Area (RNA) encompassing all waters of the Sector New York and Captain of the Port (COTP) New York Zone south of the George Washington Bridge at mile 11.0 on the Hudson River and west of the Hell Gate Railroad bridge at mile 8.2 on the East River. This action is necessary to prevent maritime traffic from interfering with spilled oil recovery operations, removal of sunken recreational vessels, debris, and cargo containers, and to ensure the safety of the response crews on scene. It will do so by prohibiting vessels from entering or remaining in the RNA unless authorized by the COTP or his Designated Representative.

DATES: This rule is effective with actual notice for purposes of

enforcement from November 9, 2012 through February 1, 2013, and effective in the Code of Federal Regulations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through February 1, 2013. Comments and related material must be received by the Coast Guard on or before December 7, 2012. Requests for public meetings must be received by the Coast Guard on or before December 7, 2012.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2012-1009. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor,

Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker, Waterways Management Division at Coast Guard Sector New York, telephone (718) 354-4195, email Jeff.M.Yunker@uscg.mil or Lieutenant Isaac Slavitt, First Coast Guard District Waterways Management Division, Boston, MA, telephone (617) 223-8385, email Isaac.M.Slavitt@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

APA	Administrative Procedure Act
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on

the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a

Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under the Administrative Procedure Act (APA) (5 U.S.C. 553). Section 553(b) provides that a general notice of proposed rulemaking (NPRM) must be published "unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law." This rule identifies the persons who will be subject to the RNA regulation: all mariners in or seeking to enter a defined area of the Sector New York and COTP New York zone between November 9, 2012, and February 1, 2013. Section 553(b)(B) authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the

public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing a NPRM would be contrary to public interest since immediate action is necessary to protect vessels, persons, port infrastructure, and salvage crews in the Port of New York and New Jersey from hazards created by multiple oil spill recovery operations, debris, cargo container, and recreational vessel salvage and retrieval operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Normal notice and comment procedures cannot be followed due to the immediate threat of collision and/or exposure to hazardous pollutants posed by the sunken containers, vessels, and other floating debris and associated pollution response and recovery operations associated with the post-storm recovery from Hurricane Sandy.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety.

The oil pollution response and recovery operations of sunken vessels, cargo containers, and debris involves large

machinery and construction vessel operations above and in the navigable waters of the Port of New York and New Jersey pose hazards to waterway users. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial traffic as well as the response and recovery crews. In order to mitigate the inherent risks involved in these operations, it is necessary to control vessel movement through the area.

The purpose of this rule is to ensure the safety of waterway users, the public, and pollution response and recovery workers for the duration of the response and recovery operations during the effective period. The RNA will also protect recovery vessels desiring to transit the Arthur Kill by ensuring that vessels are only permitted to transit at no-wake speed.

D. Discussion of the Interim Rule

The Coast Guard is establishing a temporary RNA encompassing all waters of the Sector New York and COTP zone, codified at 33 CFR 3.05-30, south of the George Washington Bridge at mile 11.0 on the Hudson River and west of the Hell Gate Railroad Bridge at mile 8.2 on the East River. This temporary RNA was necessitated by Hurricane Sandy, which struck the New York City area in late October 2012 and which caused damage requiring immediate cleanup efforts.

The COTP New York is enforcing a RNA in the vicinity of

current oil spill response and debris recovery operations due to post Hurricane Sandy conditions. The recovery of spilled oil, debris, vessels, and cargo containers involves large machinery and construction vessel operations above and upon the navigable waters of the Port of New York and New Jersey. These operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to response and recovery workers. Certain portions of the waterway within the RNA must be closed to vessel traffic due to the quantity of sunken vessels and or floating debris. The ongoing recovery operations are, by their nature, hazardous and pose risks to all vessel traffic. In order to mitigate the inherent risks involved in the operations, it is necessary to control vessel movement through the area.

This action is intended to restrict vessel traffic on the Arthur Kill, Buttermilk Channel, Great Kills Harbor north of (pa) 40-32-01.290N, 074-08-30.895W (Great Kills Harbor Channel Buoy 9 LLNR 35488) and (pa) 40-32-02.854N, 074-08-28.532W (Great Kills Harbor Channel Buoy 10 LLNR 35490), Sheepshead Bay west of (pa) 40-34-53.198N, 073-55-51.984W (Sheepshead Bay Lighted Buoy 12 LLNR 34370), and Jamaica Bay east of the Gil Hodges Memorial / Marine Parkway Bridge at mile 3.0. Vessels may be restricted from additional areas as necessary due to the dynamic nature of this response and recovery operation.

These operations are tentatively scheduled to take place starting on November 9, 2012 and lasting through February 1, 2013. Vessels required to participate in the Vessel Movement Reporting System codified at 33 CFR 161 Subpart B are required to transit the Arthur Kill at No Wake speed.

The COTP will cause notice of enforcement or suspension of enforcement of this RNA to be made by all appropriate means to achieve the widest distribution among the affected segments of the public. Such means of notification will include, but is not limited to, Marine Information Broadcasts, Local Notice to Mariners, and at <http://homeport.uscg.mil/newyork>.

E. Regulatory Analyses

We developed this temporary rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it

under those Orders.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This temporary rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the waters of the Sector New York and COTP New York zone during the effective period.

This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA will only require authorized vessels to transit at no-wake speed when transiting the Arthur Kill. Vessels can transit through Anchorage Channel and the East River to bypass Buttermilk Channel. Great Kills Harbor and Sheepshead Bay are already effectively closed due to the quantity of sunken vessels and debris in the waterways. Also, due to the extent of continuing debris reports received by the U.S. Coast Guard and U.S. Army Corps of Engineers (USACE), the COTP has determined that the local waters are not safe for recreational vessel

transits after daylight hours and Arthur Kill, Buttermilk Channel, Great Kills Harbor north of (pa) 40-32-01.290N, 074-08-30.895W (Great Kills Harbor Channel Buoy 9 LLNR 35488) and (pa) 40-32-02.854N, 074-08-28.532W (Great Kills Harbor Channel Buoy 10 LLNR 35490), Sheepshead Bay west of (pa) 40-34-53.198N, 073-55-51.984W (Sheepshead Bay Lighted Buoy 12 LLNR 34370), and Jamaica Bay east of the Gil Hodges Memorial / Marine Parkway Bridge at mile 3.0 are not safe for recreational vessel transits at any time. The RNA will only be in effect until response and recovery operations are complete. Portions of the RNA will be opened to vessel traffic as soon as the COTP New York deems it safe to do so. We will issue maritime advisories widely available to users of the port updating the status and locations of all waters restricted to vessel transits as they become available.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of

protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary rule involves a RNA which requires vessels to transit at No Wake speed and restricts some areas to vessel transits during Hurricane Sandy response and recovery operations. This temporary rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the

discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.104-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-1009 to read as follows:

§165.T01-1009 Safety Zone; Recovery Operations, the Port of New York and New Jersey, NJ and NY.

(a) Regulated Navigation Area. The following area is a Regulated Navigation Area (RNA): All navigable waters of the Sector New York and Captain of the Port (COTP) Zone defined in 33 CFR 3.05-30, south of the George Washington Bridge at mile 11.0 on the Hudson River and west of the Hell Gate Railroad Bridge at mile 8.2 on the East River.

(b) Effective dates and enforcement periods. This rule is effective and will be enforced with actual notice from November 9, 2012 through February 1, 2013, except that enforcement may be

suspended in accordance with paragraph (d)(8) of this section.

(c) Definitions. The following definitions apply to this section:

Designated representative means any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP Sector New York, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.13, as well as the following regulations, apply.

(2) During periods of enforcement, all vessels must transit at a No-wake speed to minimize surge when transiting the Arthur Kill.

(3) During periods of enforcement, all persons and vessels given permission to enter or operate in the RNA must comply with the instructions of the COTP or the designated representative. Upon being hailed by an official patrol vessel by siren, radio, flashing light, or other means, the operator of a vessel must

proceed as directed.

(4) During periods of enforcement, no vessels are authorized to transit or operate within Buttermilk Channel, within Great Kills Harbor north of (pa) 40-32-01.290N, 074-08-30.895W (Great Kills Harbor Channel Buoy 9 LLNR 35488) and (pa) 40-32-02.854N, 074-08-28.532W (Great Kills Harbor Channel Buoy 10 LLNR 35490), within Sheepshead Bay west of (pa) 40-34-53.198N, 073-55-51.984W (Sheepshead Bay Lighted Buoy 12 LLNR 34370), and within Jamaica Bay east of the Gil Hodges Memorial / Marine Parkway Bridge at mile 3.0.

(5) Vessel operators required to participate in the Vessel Movement Reporting System codified at 33 CFR part 161, subpart B, and desiring to enter or operate within the RNA must contact the COTP or the designated representative via VHF channel 11 or 16 or 718-354-4088 (Sector New York Vessel Traffic Center) to obtain permission to do so.

(6) Recreational vessel operators desiring to enter or operate within the RNA must contact the COTP or the designated representative via VHF channel 16 or 718-354-4353 (Sector New York Command Center) to obtain permission to do so, and will be permitted to enter or operate within the RNA only during daylight hours.

(7) The COTP may impose additional requirements within the RNA due to unforeseen changes to the response and recovery

operations.

(8) The COTP will make notice of specific waterway closures and restrictions, and of any suspension of enforcement, by all means available to affect the widest public distribution including, but not limited to, Marine Information Broadcasts, Local Notice to Mariners, and at <http://homeport.uscg.mil/newyork>.

Dated: November 9, 2012

D. B. Abel
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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